



June 26, 2001

Mr. Eric M. Bost
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

Open Records Decision No. 675

Re: Whether cost reports the Texas
Department of Human Services receives
from nursing facilities that participate in
the Medicaid program are available to the
public. (ORQ-34)

Dear Commissioner Bost:

You advise that the Texas Department of Human Services (the "department") administers the nursing facility part of the Medicaid program in Texas and that, in connection with the program, cost reports are submitted by nursing facilities to the department pursuant to federal law. *See* 42 C.F.R. § 447.253(f) ("The medicaid agency must provide for the filing of uniform cost reports by each participating provider."). Certain nursing facilities have contended to the department that such cost reports are excepted from public disclosure under the Texas Public Information Act, chapter 552 of the Government Code, specifically section 552.110. *See* Gov't Code § 552.110. Pursuant to section 402.042 of the Government Code, you have requested a decision from this office of whether the cost reports may be withheld from the public under the Texas Public Information Act. It is the department's position that the cost reports are required to be made public under federal laws and regulations governing the department's administration of the Medicaid program. We conclude that federal law and regulations require that the cost reports in question be made available to the public.

Title 42 of the United States Code, chapter 7, subchapter XIX, provides for the Medicaid program. A provision of subchapter XIX, section 1396r(g)(5)(A)(ii), provides that "[e]ach State . . . shall make available to the public . . . copies of cost reports of [nursing facilities] filed under this subchapter" 42 U.S.C. § 1396r(g)(5)(A)(ii); *see also* 42 U.S.C. § 1396r(a) (defining "nursing facility" as used in subchapter XIX); 42 C.F.R. § 488.325(a)(7) (Medicaid cost reports "must be made available to the public").

Nonetheless, certain nursing facilities contend that their cost reports should be withheld under section 552.110 of the Government Code, which protects from public disclosure trade secrets and certain commercial or financial information. Gov't Code § 552.110. Even if we assume, however, that these cost reports fall under an exception to public disclosure under the Texas Public Information Act, the federal provisions mandating release of the reports would control. *See, e.g., English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (state law preempted to extent it actually conflicts with federal law); Open Records Decision No. 525 at 3 (1989) (Public Information Act exceptions do not apply to information expressly made public by other statutes). Consequently, the cost reports submitted to the

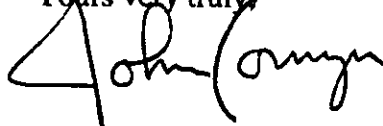
department pursuant to subchapter XIX, chapter 7, of title 42 of the United States Code by nursing facilities are public documents and may not be withheld from disclosure under the Texas Public Information Act.

This decision serves as a previous determination under section 552.301(a) with respect to nursing facility cost reports filed with the department pursuant to subchapter XIX, chapter 7, of title 42 of the United States Code. *See* Gov't Code § 552.301(a). Thus, as long as federal law continues to require the department to make these reports available to the public, the department is not required to request a decision from this office, and indeed may not again request a decision from this office, of whether the reports may be withheld under the Texas Public Information Act. *Id.* § 552.301(f); Open Records Decision No. 673 at 7-8 (2001).

SUMMARY

Cost reports submitted to the Texas Department of Human Services by nursing facilities with which the department contracts for Medicaid services must be released to the public pursuant to federal law and may not be withheld under the Texas Public Information Act.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn", written over the typed name.

JOHN CORNYN
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